



## DEPARTMENT OF VETERANS AFFAIRS

8320-01

### 38 CFR Part 17

#### RIN 2900-AP37

### Removing Net Worth Requirement from Health Care Enrollment

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is removing the regulatory provisions regarding the veteran's net worth as a factor in determining the veteran's eligibility for VA health care. Prior to January 1, 2015, VA considered a veteran's net worth and annual income when determining a veteran's assignment to an enrollment priority group for VA health care. Reporting net worth information imposed a significant burden on veterans and VA dedicated substantial administrative resources to verify the reported information. VA changed its policy regarding net worth reporting in order to improve access to VA health care to lower-income veterans and to remove the reporting burden from veterans by discontinuing collection of net worth information. As VA no longer considers net worth in making eligibility determinations, this final rule amends the regulation to remove reference to VA's discretionary statutory authority to consider a veteran's net worth as a factor in determining eligibility for VA health care. Because of the net worth reporting requirement, certain veterans who would have been eligible to receive VA health care based on their annual income were ineligible for such care, or they were placed in a lower priority category, because their net worth was too high.

**DATES:** The final rule is effective **[Insert date 30 days after date of publication in the FEDERAL REGISTER].**

**FOR FURTHER INFORMATION CONTACT:** Ralph Weishaar, Director, Program Administration, Member Services, (10NF), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; (202) 382-2508. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** In a document published in the Federal Register on October 20, 2015 (80 FR 63480), VA proposed to amend its regulations that govern enrollment in the VA health care system by removing the regulatory provision that restates VA's discretionary authority to consider the veteran's net worth when determining eligibility for lower-cost health care. VA provided a 60-day comment period, which ended on December 21, 2015. We received thirteen (13) comments on the proposed rule. Pursuant to 38 U.S.C. 1705, VA established a health care enrollment system with implementing regulations at 38 CFR 17.36. When veterans apply for VA health care benefits, VA assigns a priority category that reflects the basis for that veteran's eligibility, such as whether the veteran was rated as having a service-connected disability or would be unable to defray the costs of necessary expenses because of low income. Veterans are placed in the highest priority category they are eligible for based on the criteria described in § 17.36(b). Veterans who do not meet the requirements of priority categories 1 through 4, and are determined to be unable to defray the expenses of necessary care under 38 U.S.C. 1722(a) are placed in priority category 5. See 38 CFR 17.36(b)(5). This rulemaking affects a regulatory provision related to priority category 5. Veterans are considered unable to defray the costs of necessary care if they have a low annual income, qualify for VA pension benefits, or

otherwise meet the criteria set forth in 38 U.S.C. 1722(a) and 38 CFR 17.47(d). VA has the authority to use a veteran's net worth to determine whether the veteran is unable to defray the cost of health care at 38 U.S.C. 1722(d)(1), but this authority is discretionary.

In 2013, VA informed the public of its intent to discontinue annual income and asset information reporting by veterans. See 78 FR 64065 (Oct. 25, 2013) and 78 FR 79564 (Dec. 30, 2013). VA did not receive any adverse response to those notices. With this in mind, VA has determined that it is appropriate to cease consideration of the veteran's net worth in determining whether they are able to defray the expenses of necessary health care and qualify for inclusion in priority category 5 effective January 1, 2015.

By eliminating consideration of the veteran's net worth for purposes of health care enrollment, more veterans have qualified for VA health care in a higher priority category, which has improved access and affordability of VA health care for many lower-income veterans. This change reduced administrative burdens for veterans and VA. By eliminating the requirement to have veterans report net worth information VA will be able to use established practices with the Internal Revenue Service and Social Security Administration to verify veterans' reported annual income far more efficiently. Since this process can be done without requiring a collection of information with the Veteran, this policy has eliminated the significant burden on veterans to report their net worth, and it also eliminated the need for VA to use resources to verify that information.

For these reasons, we are removing § 17.47(d)(5) in its entirety and renumbering current § 17.47(d)(6) as § 17.47(d)(5). Current paragraph (d)(5) restates VA's discretionary statutory authority to use the veteran's net worth to determine whether he

is able to defray the costs of health care. By removing the regulatory restatement of VA's discretionary statutory authority to consider a veteran's net worth, VA removed language in the regulation that will be perceived as inconsistent with the policy change. The amendments in this rulemaking are consistent with current VA policy and help ensure our regulations are not interpreted more narrowly than VA intends.

Nine (9) commenters agreed with the change in rulemaking. One commenter stated that "all vets deserve the care they rightly earned. Net worth has nothing to do with it." Two (2) of these commenters "agree[d] with the decision to remove the net worth requirement for veterans seeking health care through the VA" and "believe[d] removing the wording that gives VA discretionary authority and replacing it with wording that leaves out financial status discrimination against Veterans is a good idea." Additionally, two (2) other of these commenters remarked "the role of this rule is to more properly and efficiently administer the health care of veterans" and that the rule "is fair, cost-effective, and supports VA's main mission of caring about Veterans." We thank the commenters for supporting the rule and make no edits based on these comments.

Four (4) others disagreed or appeared to misunderstand the proposal. The comments ranged from requesting that VA "not take away the insurance promised to our veterans" to "they served their time/retired & went on to a higher paying career, does not mean they don't deserve equal benefits." Two (2) commenters expressed concerns regarding the costs VA would incur implementing this rulemaking. Shifting veterans previously classified in categories 7 and 8 to category 5 does not increase the cost of care. Veterans shifting from categories 7 and 8 to category 5 merely collapses the categories administratively for more effective management and tracking. This shift

merely reclassifies the veterans. We recognize that it is reasonable to expect an uptick in expenditures when collapsing categories in this manner, especially when more veterans will occupy the same category. However, VA expects that it will see a decrease in collections of \$55,873,000 from 2015-2019 for categories 7 and 8. The authority to consider net worth in making these determinations is discretionary. In weighing all factors, including the economic impact of this change, VA has decided this amendment is best for VA and veterans. Therefore, VA makes no changes based on this comment. Some questioned why VA requested the income and net worth of veterans. These responses may have come from a misunderstanding of the intent of the rule. The intent of the rule is to eliminate the net worth reporting burden for veterans who seek VA health care. VA makes no edits based on these comments. Based on the rationale set forth in the Supplementary Information to the proposed rule and in this final rule, VA is adopting the proposed rule with no changes.

#### Effect of rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

#### Paperwork Reduction Act

Although, this final rule contains provisions constituting a collection of information, at 38 CFR 17.47, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), no new or revised collections of information are associated with this final rule. The information collection requirements for 38 CFR 17.47(d)(5) are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 2900-0091. On November 24, 2014 and prior to publication of the proposed rule associated with this final regulation, VA revised the Information Collection Request (ICR) to remove the net worth information collection from VA form 10-10EZ, in accordance with the Paperwork Reduction Act of 1995.

#### Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This final rule will directly affect only individuals and would not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

#### Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive

impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” which requires review by the Office of Management and Budget (OMB), as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.”

VA has examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action and determined that the action is a significant regulatory action because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order. VA’s impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA’s website at <http://www.va.gov/orpm> by following the link for VA

Regulations Published from FY 2004 through FYTD. This rule is not subject to the requirements of EO 13771 because this rule results in no more than *de minimis* costs.

#### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

#### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

#### List of Subjects in 38 CFR Part 17



Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

#### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this document on May 20, 2019, for publication.

Dated: May 21, 2019

*Consuela Benjamin,*

Regulations Development Coordinator,  
Office of Regulation Policy & Management,  
Office of the Secretary,  
Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR Part 17 as follows:

## PART 17 – MEDICAL

1. The authority citation for part 17 continues to read as follows:

AUTHORITY: 38 U.S.C. 501, and as noted in specific sections.

### § 17.47 [Amended]

2. Amend § 17.47 by removing paragraph (d)(5) and the authority citation immediately following paragraph (d)(5) and re-designating paragraph (d)(6) as new paragraph (d)(5).

[FR Doc. 2019-10869 Filed: 5/23/2019 8:45 am; Publication Date: 5/24/2019]